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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 201 OF 1998

1. The Chairman,
Halkarni Bhag Shikshan
Prasarak Mandal, Halkarni,
Tal. Gadhinglaj, Dist. Kolhapur.

2. The Principal,
Halkarni Bhag Higher Secondary School,
Halkarni, Tal. Gadhinglaj,
Dist. Kolhapur. ... Petitioners

V/s

1. Shri Balkrishna Veerappa Chougule
2. The Dy. Director of Education,
Kolhapur.
3. Shri Hullappa Vithal Pujari
4. The Presiding Officer,
School Tribunal, Kolhapur. ... Respondents

Mr. N.V.Bandiwadekar for the petitioners.

Mr. S.S.Pakale for the Respondent No.1.

Mr. S.K.Chinchalikar, A.G.P. for the Respondent No.2.

Mr. D.S.Sawant for the Respodnent No.3.

CORAM: SMT. NISHITA MHATRE, J.

DATED: RESERVED ON 6.9.2007.

PRONOUNCED ON 18.10.2007

ORAL JUDGMENT:

1. The petition challenges the order of the School Tribunal dated 13.11.1997 by which the School Tribunal has passed the following order in the appeal filed by the respondent No.1:-

> "1. The appeal is hereby allowed.
>
> 2. The termination notice dated 1.9.1993 is hereby declared illegal, ineffective and ab initio void, therefore, it is quashed and set aside.
>
> 3. The respondent Nos. 1 to 3 are hereby ordered to maintain continue services of the appellant as being permanent employee as the intierim stay order is confirmed and to pay him back emoluments including pay and allowances if any are not paid to him from the date of termination till decision.
>
> 4. The respondent Nos. 1 to 3 are hereby ordered to maintain the services of the respondent No.4 as being permanent employee either in the present institute or if no vacancy is available then by treating him as surplus candidate in any other institute as per the directions of respondent No.1.
>
> 5. The respondent Nos. 1 to 3 are further ordered to pay unpaid salary of the respondent No.4 in prescribed scale from the date of his appointment out of non-salary grant of the respondent No.1 institute till his services will be absorbed in any other institute as being surplus candidate.
>
> 6. The parties should bear their own costs.
>
> 7. The respondents are further ordered to observe and obey above directions within 40 days after receiving copy of judgment in hands and compliance be reported."

2. The appeal was filed by the 1st respondent contending that his services have been illegally

terminated by the petitioners. He had been appointed in a post reserved for the backward class category. Respondent No.1 admittedly does not belong to the backward class. His appointment was not approved by the Education Officer. However, he was continued in service by the petitioners since there was no suitable candidate available from the reserved category for the post. The 1st respondent worked in this manner from the academic year 1988-89 to 1.9.1993. The appointment, on each occasion, according to the petitioners, was a temporary appointment against a reserved category post.

3. Pursuant to an advertisement issued on 12.6.1993, the petitioners selected one Mr.R.B.Bhoi from the S.T. Category. He was appointed on probation for a period of two years to teach Marathi. The petitioners informed the 1st respondent that his services were no longer required since a suitable candidate from the backward class category was available. However, this candidate left the services of the petitioners within 15 days of his appointment and the petitioners then appointed one A.N.Malage for the academic year 1993-94. An advertisement was issued on 25.7.1994 by the petitioners for a teacher from the N.T. category to teach Marathi. The petitioners selected respondent No.3 who was appointed on probation from 8.8.1994 for a period of two

years.

4. The 1st respondent filed Appeal No. 170 of 1993 before the School Tribunal challenging his termination from service. It appears that although respondent No.3 was a backward class candidate whose services ought to have been regularized with the petitioners. However, his appointment was not approved by the respondent No.2, the Deputy Director of Education, on the ground that respondent No.1 had filed the appeal. Respondent No.3 was impleaded as a party to the appeal filed by the respondent No.1. It appears that because his appointment was not approved, the petitioners did not receive the salary grant for that post. No salary was, therefore, paid to the respondent No.3 while he was working with the petitioners.

5. An ad-interim order was granted in favour of the respondent No.1 by the School Tribunal directing the petitioners to permit him to resume duty. The School Tribunal on 13.11.1997 by its impugned order has set aside the notice of termination of service dated 1.9.1993. The School Tribunal held that respondent No.1 was deemed to be permanent in service under Section 5 of the M.E.P.S. Act and, therefore, granted the aforesaid relief in the appeal.

6. An affidavit has been filed by the Secretary of the petitioner No.1 averring that respondent No.1 is no longer in employment with the petitioners and that he had tendered his resignation on 27.9.1999 which was accepted by the petitioners. He has been appointed as a Lecturer w.e.f. 27.9.1999 in a senior college in Kolhapur. Respondent No.3 who had been appointed in place of the 1st respondent, it appears from a subsequent affidavit filed by the petitioner No.2, was declared surplus by the petitioners on 5.3.1998. He has also been absorbed by another institute. Thus the only question which remains today is, whether Clause (5) of the operative order of the School Tribunal is required to be set aside.

7. The principal contention of the learned advocate for the petitioners is that the School Tribunal could not have granted any relief to the respondent No.3 in an appeal filed by the respondent No.1 although he was one of the respondents to the appeal. The School Tribunal has directed the petitioners to pay the un-paid salary of the respondent No.3 from the date of his appointment, out of the non-salary grant made available to the petitioners, till his services were absorbed in some other institute. He submits that under Section 9 of the

M.E.P.S. Act, the School Tribunal had the power to grant only the relief sought by the appellant i.e. respondent No.1 herein. If at all the respondent No.3 had a claim for payment of wages, the remedy for him was to file appropriate proceedings, according to the learned advocate. He submits that the powers of the Tribunal to grant relief are circumscribed by Section 11 of the M.E.P.S. Act and, therefore, although the Tribunal could have directed payment of wages to respondent No.1, a similar direction could not have been issued regarding payment to respondent no.3 who had not filed any appeal.

8. Mr. Sawant appearing for the respondent No.3 submits that the ultimate aim before any Court of law is to do substantial justice to the parties litigating before it. He submits that, admittedly, respondent No.3 had not been paid any salary for almost four years while he was in service of the petitioners. According to the learned advocate, the primary duty of payment of salary to an employee of the school is that of the institute/school in which the employee is working. The learned advocate submits that payment of salary to an employee does not depend on granting approval to that particular person being appointed to the post. According to the learned advocate, the payment of salary

cannot be based on the availability of the grant and, therefore, the Tribunal has correctly awarded the amount to the respondent No.3. He then points out that the M.E.P.S. Act stipulates that the appeal which has been filed before it, is to be heard in a manner similar to appeals filed under the Code of Civil Procedure. He points out the provisions of Section 10 of the M.E.P.S. Act to submit that the Tribunal is vested with the same powers as an appellate Court under the Code of Civil Procedure. According to him, under Order 41 the appellate Court is empowered to grant relief to parties litigating before it, i.e. even to the respondent to the appeal although the initial proceedings may not have been instituted by that respondent.

9. There is not even an iota of doubt that the primary responsibility for payment of salary to its employees rests with the school or institution which runs the school. There could be no dispute that once an employee works and discharges his duties in the school, he is entitled to be reimbursed for his services. However, if such an employee who is entitled to the salary is not paid the same, he has a right to initiate appropriate proceedings against the management to recover the amount. Although Section 9 of the M.E.P.S. Act does not govern such cases in respect of non-payment of

salary, there are other remedies open to the aggrieved employee.

10. The powers of the School Tribunal are circumscribed by the provisions of Sections 9, 11 and 13 of the M.E.P.S. Act. The School Tribunal being a creature of the statute cannot exercise powers beyond those vested in it by the statute. Although an appeal is to be decided in a manner similar to appeal under the Civil Procedure Code as provided under Section 10 of the M.E.P.S. Act, the jurisdiction which the Tribunal can exercise is limited to matters falling within the ambit of Section 9. The reliefs and directions which the School Tribunal may grant are stipulated in Section 11. However, it is obvious that such relief can be granted to the person who initiates proceedings under Section 11. Directions can be issued by the Tribunal to the management under Section 11(2)(c) for payment of "arrears of emoluments to the employee". However, such a direction cannot be passed in favour of a person who has not filed the appeal as it can be issued only when the order of termination of service is set aside. Section 13 deals with the Tribunal’s power to impose penalties on a management for failure to comply with orders passed against under the M.E.P.S. Act.

11. In my view, the proceeding which is instituted by an aggrieved employee under Section 9 of the M.E.P.S. act is in that sense an original proceeding though labelled as an appeal. It is no doubt true that parties to an appeal can raise cross objections and since the appeal under Section 9 is to be decided in a manner similar to appeals under the Civil Procedure Code, the respondent No.3 could have raised such cross objections. However, in the present case, respondent No.3 has submitted his written statement denying the claim of respondent No.1. There is no pleading to the effect that he was not being paid his salary although he was in service of the petitioners at that point of time. The School Tribunal has framed an issue as to whether respondent No.3 who had completed his period of probation satisfactorily and in accordance with the approval granted by the department, was entitled to continuous service either in the present institute or to be declared surplus and to be accommodated in some other institute. The Tribunal while discussing this issue has held that respondent No.3 had discharged his duties to the satisfaction of the petitioners and that his services had been approved by respondent No.2. It is in these circumstances that the Tribunal has directed payment for the period during which respondent No.4 was in service till he was absorbed as a surplus candidate

in some other institute.

12. The learned advocate for the petitioners takes exception to this finding of the School Tribunal on the aforesaid grounds. In my view, the objection raised by the learned advocate for the petitioners is well founded as there does not appear any allegation of non-payment of salary made by the respondent No.3 in his written statement. There was no occasion, therefore, for the petitioners to rebut this averment. Besides this issue has been wrongly framed by the Tribunal since the respondent No.2 had not granted approval to the appointment of respondent No.3. Moreover, the Tribunal had already answered in the affirmative that respondent No.1 was deemed to be in permanent service for the same period.

13. In my view, therefore, the directions contained in clause (5) of the operative portion of the order must be set aside. However, this would not preclude the respondent No.3 to claim his salary for the work done by him in a proper proceeding.

14. Petition allowed. Rule made absolute.

15. No order as to costs.

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